

234946

STATE OF SOUTH CAROLINA

(Caption of Case)

BEFORE THE  
PUBLIC SERVICE COMMISSION  
OF SOUTH CAROLINA

COVER SHEET

DOCKET/NDI  
NUMBER:

2011 - 317 - WS

(Please type or print)

Submitted by: Michael Molony

SC Bar Number: 4026

Address: 25 Calhoun Street

Telephone: (843) 724-6631

Suite 400

Fax:

Charleston SC 29401

Other:

Email: mmolony@ycrlaw.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for use by the Public Service Commission of South Carolina for the purpose of docketing and must be filled out completely.

DOCKETING INFORMATION (Check all that apply)

☐ Emergency Relief demanded in petition

☐ Request for item to be placed on Commission's Agenda expeditiously

☐ Other:

INDUSTRY (Check one)

- ☐ Electric  
☐ Electric/Gas  
☐ Electric/Telecommunications  
☐ Electric/Water  
☐ Electric/Water/Telecom.  
☐ Electric/Water/Sewer  
☐ Gas  
☐ Railroad  
☐ Sewer  
☐ Telecommunications  
☐ Transportation  
☐ Water  
☐ Water/Sewer  
☐ Administrative Matter  
☐ Other: \_\_\_\_\_

NATURE OF ACTION (Check all that apply)

- |                                                    |                                                            |                                                    |
|----------------------------------------------------|------------------------------------------------------------|----------------------------------------------------|
| <input type="checkbox"/> Affidavit                 | <input type="checkbox"/> Letter                            | <input type="checkbox"/> Request                   |
| <input type="checkbox"/> Agreement                 | <input type="checkbox"/> Memorandum                        | <input type="checkbox"/> Request for Certification |
| <input type="checkbox"/> Answer                    | <input type="checkbox"/> Motion                            | <input type="checkbox"/> Request for Investigation |
| <input type="checkbox"/> Appellate Review          | <input type="checkbox"/> Objection                         | <input type="checkbox"/> Resale Agreement          |
| <input type="checkbox"/> Application               | <input type="checkbox"/> Petition                          | <input type="checkbox"/> Resale Amendment          |
| <input type="checkbox"/> Brief                     | <input type="checkbox"/> Petition for Reconsideration      | <input type="checkbox"/> Reservation Letter        |
| <input type="checkbox"/> Certificate               | <input type="checkbox"/> Petition for Rulemaking           | <input type="checkbox"/> Response                  |
| <input type="checkbox"/> Comments                  | <input type="checkbox"/> Petition for Rule to Show Cause   | <input type="checkbox"/> Response to Discovery     |
| <input type="checkbox"/> Complaint                 | <input type="checkbox"/> Petition to Intervene             | <input type="checkbox"/> Return to Petition        |
| <input type="checkbox"/> Consent Order             | <input type="checkbox"/> Petition to Intervene Out of Time | <input type="checkbox"/> Stipulation               |
| <input type="checkbox"/> Discovery                 | <input type="checkbox"/> Prefiled Testimony                | <input type="checkbox"/> Subpoena                  |
| <input type="checkbox"/> Exhibit                   | <input type="checkbox"/> Promotion                         | <input type="checkbox"/> Tariff                    |
| <input type="checkbox"/> Expedited Consideration   | <input type="checkbox"/> Proposed Order                    | <input type="checkbox"/> Other: _____              |
| <input type="checkbox"/> Interconnection Agreement | <input type="checkbox"/> Protest                           |                                                    |
| <input type="checkbox"/> Interconnection Amendment | <input type="checkbox"/> Publisher's Affidavit             |                                                    |
| <input type="checkbox"/> Late-Filed Exhibit        | <input type="checkbox"/> Report                            |                                                    |



Michael A. Molony

Direct Dial: (843) 724-6631  
Direct Fax: (843) 579-1356  
E-mail: mmolony@yctrlaw.com

January 31, 2012

**Via E-File**

Jocelyn Boyd  
South Carolina Public Service Commission  
P.O. Drawer 11649  
Columbia, SC 29211

Re: Kiawah Island Utility, Inc. Rate Increase Application  
Docket No.: 2011-317-WS  
YCR File: 2589-20110772

Dear Jocelyn:

Late last Friday afternoon (January 27, 2012), after the submission of proposed orders and closing argument passed, after the Kiawah Island Utility, Inc. ("KIU") filed an additional 14 pages of memoranda and correspondence addressing issues in this docket. On behalf of the Kiawah Property Owners Group ("KPOG"), as well as our lay and expert witnesses, I am compelled to address certain matters in KIU's filing.

First of all, every witness who testified at the October public hearing before the Commission was respectful, clearly stated the reason for their opposition to KIU's rate increase, and maintained appropriate decorum. In fact, many of these witnesses supported KIU's application for a second water line construction, which was part of the proceeding at that time. They were in no way "the most militant of pocketbook opponents." (See KIU Memorandum of January 27, 2012, p 2.) That description is offensive and unwarranted.

Secondly, KIU makes disparaging statements regarding the positions that were objectively, carefully and concisely set forth by KPOG's witnesses, both at the public hearing and the hearing in Columbia. The insinuation that these lay and expert witnesses were engaging in "has thrown everything against the wall in hopes that something sticks" (see KIU Memorandum dated January 27, 2012, p. 1) is both disrespectful and incorrect.

These witnesses are respected professionals; Lynn Lanier establishes rate schedules for some of the largest utility providers in South Carolina. Ellen Blumenthal is a veteran Public Utility Commission of Texas employee who provided expert witness in investor owned water utility rate cases pertaining to affiliated transactions and a certified public accountant. Further, the expert testimony of Bill Rogers is based on decades of experience in the utility field. He is now the treasurer of American Water Works, one of the largest water utilities in the United

January 31, 2012

Page

---

States. It is also worthy of note that there were no references to any of the testimony of these expert witnesses in the post-January 8, 2012 filings proffered by KIU.

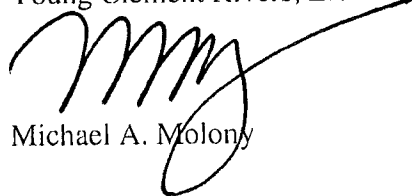
Finally, ratemaking proceedings before the Commission are not "guerilla warfare." (See KIU Memorandum, dated January 27, 2012, page 11.) That characterization is not only incorrect and unfair, but, like the other matters addressed above, begs the question as to why it was made at all.

While we all appreciate zealous advocacy, the rhetoric in this latest, and hopefully last, filing crosses that line. The parties may disagree, but they need not be disagreeable in the process. KIU had no reason to use the emotionally charged language in the memorandum dated January 27, 2012, but by doing so they diminished the integrity of the process. The case presented by KPOG was objective, thorough, and factual. This is a serious matter pending before the Commission, and we hope the disparaging remarks by KIU will be disregarded by the Commission in its deliberations. The attached exhibit reiterates our major points which may be obfuscated by the Utility's latest filing.

With kind regards, I am

Sincerely,

Young Clement Rivers, LLP

A handwritten signature in black ink, appearing to read "MAM", with a long horizontal line extending to the right.

Michael A. Molony

MAM/jrh

Enclosure(s)

cc: David Butler  
Shannon Bowyer Hudson  
Jeffrey M. Nelson, Esquire  
G. Trenholm Walker, Esquire  
Jason S. Luck, Esquire  
John P. Seibels, Jr., Esquire  
Diane Lehder  
Wendy Kulick

- **Burden of Proof:**
  - The Utility has the burden of proof in these proceedings;
  - The burden is higher since the rate request involves affiliated intercompany transactions and expenses; and
  - The burden must demonstrate sound fiscal management as well as good service.
  
- **Public Support:**
  - The PSC received letters from more than 100 property owners who did not support the increase requested; and
  - This is not a question of whether rate payers can afford the rate increase, but whether or not the utility can justify the rate increase.
  
- **Real Estate Transactions:**
  - The Utility did not seek approval, formal or informal, of any of these transactions;
  - The Utility's parent used these transactions to buy assets it already owned, since it is the 100% owner of the stock of the Utility;
  - The Utility pledged virtually all of its operating revenue in these three transactions;
  - The Utility's audited financial statements define KIU and KRA as related parties;
  - The Utility's loan documents allow borrowing up to \$15 million in each of the three transactions;
  - The transactions encumbered the utility with \$5.18m in debt;
  - Funds from these transactions could have essentially paid for the second water main to serve the entire island;
  - Funds from these transactions provided the parent approximately three times the amount requested in this rate increase;
  - The Utility's fitness and ability to provide water and sewer service has been impaired by decreasing its borrowing capacity for its public utility purposes; and
  - These transactions were neither prudent nor in the public interest.
  
- **Utility Services Agreement:** The 1997 Utility Service Agreement was not approved by the Commission:
  - After the PSC learned of the 1994 Utility Service Agreement, it admonished KIU, warning there would be consequences for such behavior/actions in the future
  - That agreement eliminated the provision in the 1994 Utility Service Agreement that land sales from the Parent to KIU occurs at 50% of Fair Market Value and increased the cost of any land bought by KIU from KRA to no more than 100% of Fair Market Value. Witness Blumenthal testified that this revision has no public benefit;

- The agreement is neither prudent nor in the public interest.
- **Operating Margin:**
  - The Utility should not be entitled to a rate increase simply due to the passage of time;
  - The Utility should not be afforded an operating margin of 13.75%, almost twice what it typically received in the past;
  - The Utility has had seven increases through direct pass throughs associated with increases in water costs; and
  - The Utility's 2007-2010 margins and Net Income have been stable (with the exception of 2009, when net income was lower due to lower water revenue, not increased expenses) as testified by Witness Lanier.



## South Carolina House of Representatives

P. O. BOX 11867 • COLUMBIA, S.C. 29211 • TELEPHONE 734-2010

Jocelyn Boyd  
South Carolina Public Service Commission  
P.O. Drawer 11649  
Columbia, SC 29211

Re: Kiawah Island Utility Rate Increase Application  
PSC Docket No. 2011-317-W/S

Dear Jocelyn:

As the Representative for the District where the water/sewer service utility provides service to constituents to Kiawah Island, I would respectfully request the Commission to carefully consider this request. As an elected official, it is hard for me to imagine a scenario where a rate increase would be appropriate in the current economic climate.

As I understand it, a public hearing indicated overwhelming opposition to the increase and that the Town may still be in negotiations to acquire the Utility.

While I understand the need for appropriate rates to operate a utility, and your role to ensure that is the case, the timing of this particular filing is suspect and could result in a windfall to the utility if the increase is granted. Furthermore, I understand that expert witnesses for the property owners have presented evidence to show the return that is necessary for successful operation does not warrant a rate increase.

At my suggestion, the SC House of Representatives has gone on record opposing other proposed rate increases in recent months. I know you will give this application careful consideration and I hope you will reject the application should you find it to be untimely, unnecessary or not in the best interest of those on the Island.

With kind regards, I am

Sincerely

A handwritten signature in black ink, appearing to read "L. Stavrinakis", written over a horizontal line.

Leon E. Stavrinakis  
South Carolina House District 119

BEFORE THE  
PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA  
Docket No. 2011-317-W/S

CERTIFICATE OF MAILING

We hereby certify that on this 31 day of January 2012, we served a copy of Intervenor  
Kiawah Property Owners Group, Inc., Letter to the Chief Clerk and Administrator of the Public  
Service Commission upon:

G. Trenholm Walker, Esquire  
Pratt-Thomas, Pearce, Epting, & Walker  
P.O. Drawer 22247  
Charleston, South Carolina 29413-2227

Jocelyn Boyd  
Chief Clerk & Administrator  
South Carolina Public Service Commission  
P. O. Box 11649  
Columbia, SC 29211

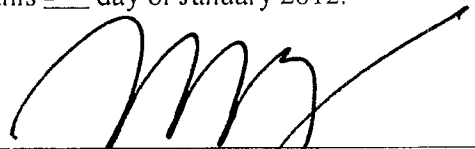
Jeffrey M. Nelson, Esquire  
Counsel, Office of Regulatory Staff  
1401 Main Street, Suite 900  
Columbia, SC 29201

Shannon Bowyer Hudson, Esquire  
Counsel, Office of Regulatory Staff  
1401 Main Street, Suite 900  
Columbia, SC 29201

Jason Scott Luck, Esquire  
John P. Seibels, Jr. Esquire  
Kiawah Island Community Association, Incorporated  
The Seibels Law Firm  
127 King Street, Suite 100  
Charleston, SC 29401

by electronic filing.

DATED at Charleston, South Carolina, this 31 day of January 2012.



MICHAEL A. MOLONY, ESQUIRE  
Young Clement Rivers, LLP  
25 Calhoun Street, P.O. Box 993  
Charleston, South Carolina 29401

Charleston, South Carolina